IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 7TH DECEMBER 2006 / 16TH AGRAHAYANA 1928

RSA.No. 633 of 2005()

AS.47/2004 of SUB COURT,NEYYATTINKARA
OS.505/1997 of PRL.M.C.,NEYYATTINKARA

.....

APPELLANT/DEFENDANT:

PERUNKATAVILA GRAMA PANCHAYAT,
PERUNKATAVILA, REPRESENTED BY ITS
SECRETARY.

BY ADV. SRI.R.S.KALKURA

RESPONDENTS: PLAINTIFF:

BHASKARA NAIR, S/O. MADHAVAN PILLAI,
RESIDING AT LAKSHMI NIVAS,
PERUNKATAVILA P.O., TRIVANDRUM.

BY ADV. SRI.K.B.PRADEEP

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 07/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN, J

R.S.A.No.633 OF 2005

Dated this the 7th day of December, 2006

JUDGMENT

1. The appellant Panchayat faced a suit relating to title to property. The suit was contested and decreed. According to the Panchayat the land involved belonged absolutely to the Panchayat and the plaintiff does not have a shed of right over it.

2. A first appeal under Section 96 of the Code of Civil Procedure was filed with an application to condone delay of 743 days throwing the blame on the counsel who was appearing before the trial court. It is submitted that the officers of the Panchayat knew about the suit only on a routine check up of the files and that the lawyer did not keep the Panchayat informed of the developments of the case. This, obviously, is not the quality of vigilance that is expected from those manning public institutions like Panchayats. But what is involved in the litigation is an item of property over which the

plaintiff claims title as against the Panchayat and therefore, a larger public interest touching something which may or may not be a piece of public property is the subject matter of the litigation. Under such circumstance, the nature of the litigation ought to have prompted the court below to condone the delay, even on terms.

3. Having regard to what is aforesaid, the impugned order and the resultant dismissal of the first appeal are bad in law in as much as the lower appellate court has failed to exercise jurisdiction under Section 5 of the Limitation Act as enjoined by the said provision.

4. In the result, the impugned decree and order of the lower appellate court is set aside and the application filed before the lower appellate court viz. I.A.938/04 is allowed, being satisfied that sufficient cause has been shown to condone the delay. The appeal will stand admitted to file, to be heard and decided on merits. This will, however, be on condition that the appellant

pays to the respondent an amount of Rs.5,000/- as costs within a period of one month from today, payable through counsel appearing before this Court. The parties will appear before the lower appellate court on 4.1.2007.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.